Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	SB0037	**Title:**	Revise income tax credit for energy conservation expenditures
Primary Sponsor:	Kaufmann, Christine	**Status:**	As Amended in Senate Committee

- ☐ Significant Local Gov Impact
- ☐ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$73,990	$66,590	$68,062	$0
Revenue:				
General Fund	($4,439,881)	($4,533,593)	$0	$0
Net Impact-General Fund Balance	($4,513,871)	($4,600,183)	($68,062)	$0

Description of fiscal impact:

For tax years 2009 and 2010, this bill makes the following changes to the income tax credit for energy conservation investments in a building:

- It increases the maximum credit from $500 per taxpayer to $800 per taxpayer.
- It allows partnerships, S corporations, and other disregarded entities to claim the credit on behalf of their owners for investments in a residential rental building.
- It expands the investments eligible for the credit to include refrigeration in rental buildings owned by a pass-through entity and lighting.
- It makes the credit refundable for low-income taxpayers

These changes would reduce general fund revenue by about $4.5 million per year in FY 2010 and FY 2011.

FISCAL ANALYSIS

Assumptions:

1. Under current law, taxpayers are allowed a credit of 25% of eligible energy conservation investments, with a cap of $500 per taxpayer. (Individuals who combine to make an investment may each take the credit for their share of the total cost.) Thus, taxpayers with eligible expenditures of $2,000 or less are unaffected by the current cap, while taxpayers with eligible expenditures of more than $2,000 are limited to a credit of $500.

2. On 2007 returns, 7,798 taxpayers were at the cap. This consists of 2,090 individuals claiming $500 credits and 2,854 married couples claiming $1,000, either on a joint return or on separate returns filed on the same form. Total credits claimed by capped taxpayers were $3,899,000.
3. Based on the distribution of credits less than $500, it is estimated that, with an $800 cap, 5,040 taxpayers would have claimed credits at the $800 cap, and 2,758 taxpayers would have claimed credits between $500 and $800, with an average of $602.
4. With an $800 cap, credits would have been $1,793,316 higher (5,040 x $300 + 2,758 x $102).
5. On 2007 returns, 953 taxpayers who met the income requirements to have the credit refunded under this bill claimed $367,707 in credits. This was $339,437 more than their tax liability. Under this bill, that amount would have been refunded to taxpayers.
6. In 2007, the percentage of homeowner households who took the credit is approximately half as high for households with income less than $20,000 as it is for households with income between $20,000 and $40,000. Making the credit refundable would increase the number of low-income taxpayers who claim it. This fiscal note assumes that twice as many households meeting the income requirements for refundability would have claimed the credit if it were refundable and that the additional households would have claimed the same amount as was actually claimed by eligible households, $367,707.
7. There are 110,612 rental units in Montana (American Community Survey). At least half of these units are owned by individuals, who can claim the credit for investments under current law. Even with a tax credit covering part of the costs, a landlord has an incentive to invest in energy efficiency only if the landlord can recover the costs through lower energy bills or higher rents. Landlords pay for all utilities in less than 20% of units and pay for some utilities in a higher, but unknown percent of units. For this fiscal note, it is assumed that 25% of rental units are owned by pass-through entities that pay for enough of the unit's heat and other utilities to have an incentive to invest in energy conservation.
8. In 2007, 7.3% of homeowners claimed the energy conservation credit. Assuming that pass-through entity landlords will have the same participation rate on units where the landlord pays some of the utilities, they would have claimed credits on 2,019 units (7.3% x 25% x 110,612). Assuming that each would claim the maximum credit, credits would have been $1,615,200 (2,019 x $800).
9. If this bill had been in effect in 2007, credits would have been $4,115,660 higher ($1,793,316 + $339,437 + $367,707+ $1,615,200).
10. This credit is not forecast separately in HJR2, but it accounts for most of a group of income tax credits that are forecast to grow by the following percentages from the 2007 base:

2009	7.88%
2010	10.15%

11. Assuming that the increases due to this bill would grow at the same rate, this bill would increase income tax credits by the following amounts:

2009	$4,439,881
2010	$4,533,593

12. Credits will be claimed on income tax returns filed in the spring following each tax year. The increases in credits for 2009 and 2010 will result in the same reductions in revenue for FY 2010 and FY 2011.
13. Department of Revenue auditors adjust approximately 25% of the claims for this credit that they examine. With the growth in use of this credit since it was last amended and the additional use expected because of this bill, the department will require an additional 1.00 FTE tax examiner to ensure high taxpayer compliance with the law. This position would be filled in FY 2010 as the additional credit applications due to this bill begin to be audited and would be eliminated at the end of FY 2012 when auditing of the additional applications from 2010 is complete. Annual salary and benefits for this position would be $58,894, with a 2.5% inflation factor applied in FY 2012. Annual operating costs associated with this position would be $7,696. Equipment costs to set up a new employee would be $4,900 in FY 2010.

14. The provisions to allow the credit to be refunded to low-income taxpayers and to allow pass-through entities to claim the credit for their owners would require new forms. It would cost $2,500 to develop them in FY 2010. Changes to the department's data processing system to handle the new forms will be made as part of the annual update process with no additional costs to the Department of Revenue.

	FY 2010 Difference	**FY 2011 Difference**	**FY 2012 Difference**	**FY 2013 Difference**
Fiscal Impact:				
FTE	1.00	1.00	1.00	0.00
Expenditures:				
Personal Services	$58,894	$58,894	$60,366	$0
Operating Expenses	$10,196	$7,696	$7,696	$0
Equipment	$4,900	$0	$0	$0
TOTAL Expenditures	$73,990	$66,590	$68,062	$0
Funding of Expenditures:				
General Fund (01)	$73,990	$66,590	$68,062	$0
Revenues:				
General Fund (01)	($4,439,881)	($4,533,593)	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($4,513,871)	($4,600,183)	($68,062)	$0

Technical Notes:

1. Section 2 makes this bill contingent on House Bill 645 being passed and approved with funding for the income tax credit in this bill. If House Bill 645 is not passed and approved with this funding, this bill would have not fiscal impact.
2. An owner of a pass-through entity may be a C-corporation. Subsection (3) allows the owners of a pass-through entity to claim a credit against individual income tax. It appears that this would require a pass-through to reduce credits it claims on a composite return by the proportion of its ownership that is held by C-corporations. If that is not the intent, it should be clarified.
3. Language in subsections (3) and (7) is inconsistent with the general use of the term "taxpayer" and the treatment of pass-through entities in Title 15. Both subsections refer to pass through entities as taxpayers, and subsection (3) refers to a pass-through's tax liability. A pass-through entity is not a taxpayer and does not have tax liability. The income of a pass-through entity is taxable to its owners. Under the provisions of Chapter 30, Part 11, a pass-through entity may file a composite return and pay tax on behalf of its owners. The term "taxpayers" is properly applied to the owners, not to the pass-through. Amendments 0037001SC.sdr partly corrected this problem, but there are remaining references to pass-throughs as taxpayers on page 2, lines 4, 5, and 18.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*